

## **IC 6-3.1-23**

### **Chapter 23. Voluntary Remediation Tax Credit**

## **IC 6-3.1-23-1**

### **"Brownfield" defined**

Sec. 1. As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

*As added by P.L.109-2001, SEC.1.*

## **IC 6-3.1-23-1.5**

### **"Legislative body"**

Sec. 1.5. As used in this chapter, "legislative body" refers to:

- (1) the legislative body of a municipality (as defined in IC 36-1-2-11) in which is located property on which remediation referred to in section 3(1) of this chapter occurs; or
- (2) if the property referred to in subdivision (1) is not located in a municipality, the legislative body of the county in which the property is located.

*As added by P.L.245-2003, SEC.26.*

## **IC 6-3.1-23-2**

### **"Pass through entity" defined**

Sec. 2. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

*As added by P.L.109-2001, SEC.1.*

## **IC 6-3.1-23-3**

### **"Qualified investment" defined**

Sec. 3. As used in this chapter, "qualified investment" means costs that:

- (1) result from work performed in Indiana to conduct a voluntary remediation, whether or not under IC 13-25-5, that involves the remediation of a brownfield;
- (2) are not recovered by a taxpayer from another person after the taxpayer has made a good faith effort to recover the costs;
- (3) are not paid from state financial assistance;
- (4) result in taxable income to any other Indiana taxpayer; and
- (5) are approved by the department of environmental management and the Indiana development finance authority under section 12 of this chapter.

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.27.*

## **IC 6-3.1-23-3.5**

### **"State financial assistance" defined**

Sec. 3.5. As used in this chapter, "state financial assistance"

means money received by a taxpayer:

- (1) as a direct loan:
  - (A) under a state program; or
  - (B) of:
    - (i) loan proceeds; or
    - (ii) grant proceeds;received by a political subdivision under a state program; or
- (2) as a grant:
  - (A) under a state program; or
  - (B) of:
    - (i) loan proceeds; or
    - (ii) grant proceeds;received by a political subdivision under a state program.

*As added by P.L.245-2003, SEC.28.*

#### **IC 6-3.1-23-4**

##### **"State tax liability" defined**

Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability incurred under:

- (1) IC 6-2.5 (the state gross retail and use tax);
- (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (3) IC 6-5.5 (the financial institutions tax); and
- (4) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

*As added by P.L.109-2001, SEC.1. Amended by P.L.192-2002(ss), SEC.118.*

#### **IC 6-3.1-23-5**

##### **Taxpayer credit; eligibility; resolution of legislative body; department determination**

Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

- (1) The taxpayer does the following:
  - (A) Makes a qualified investment in that taxable year.
  - (B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties.
  - (C) Submits a plan to the legislative body that:
    - (i) describes the taxpayer's proposed redevelopment of the property;
    - (ii) indicates the sources and amounts of money to be used for the remediation and proposed redevelopment of the property; and
    - (iii) estimates the value of the remediation and proposed redevelopment.
  - (D) Certifies to the legislative body that the taxpayer:
    - (i) has never had an ownership interest in an entity that

- contributed; and
  - (ii) has not contributed;
- to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority.
- (2) The legislative body, after holding a public hearing of which notice was given under IC 5-3-1, adopts a resolution:
- (A) determining that:
    - (i) the estimate of the value of the remediation and proposed redevelopment included in the plan under subdivision (1)(C)(iii) is reasonable for projects of that nature; and
    - (ii) the plan submitted under subdivision (1)(C) is in the best interest of the community;
  - (B) determining that the taxpayer:
    - (i) has never had an ownership interest in an entity that contributed; and
    - (ii) has not contributed;
- to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management and the Indiana development finance authority; and
- (C) approving the credit.
- (3) The department determines under section 15 of this chapter that the taxpayer's return claiming the credit is filed with the department before the maximum amount of credits allowed under this chapter is met.
- (b) In determining whether the redevelopment is in the best interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:
- (1) the development of housing;
  - (2) the development of green space;
  - (3) the development of high technology businesses; or
  - (4) the creation or retention of high paying jobs.

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.29.*

#### **IC 6-3.1-23-6**

##### **Amount of credit**

Sec. 6. The amount of the credit allowed under this chapter is equal to the lesser of:

- (1) one hundred thousand dollars (\$100,000); or
- (2) ten percent (10%) multiplied by the qualified investment made by the taxpayer during the taxable year.

*As added by P.L.109-2001, SEC.1.*

#### **IC 6-3.1-23-7 Repealed**

*(Repealed by P.L.245-2003, SEC.35.)*

**IC 6-3.1-23-8**

**Repealed**

*(Repealed by P.L.245-2003, SEC.35.)*

**IC 6-3.1-23-9**

**Repealed**

*(Repealed by P.L.245-2003, SEC.35.)*

**IC 6-3.1-23-10**

**Repealed**

*(Repealed by P.L.245-2003, SEC.35.)*

**IC 6-3.1-23-11**

**Credit carryover and carryback**

Sec. 11. (a) If the amount determined under section 6 of this chapter in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess:

- (1) over for not more than the immediately following five (5) taxable years; or
- (2) back to the immediately preceding taxable year.

(b) The amount of excess available to be used for carryover under subsection (a)(1) is reduced to the extent it is used for:

- (1) a carryover under subsection (a)(1); or
- (2) a carryback under subsection (a)(2).

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.30.*

**IC 6-3.1-23-12**

**Certification of qualified investment action; action required by taxpayer**

Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) Upon receipt of a request under subsection (a), the department of environmental management and the Indiana development finance authority shall:

- (1) examine the costs under the standards adopted by the department of environmental management; and
- (2) certify any costs that the department and the authority determine to be a qualified investment.

(d) Upon completion of a voluntary remediation for which costs have been certified as a qualified investment under subsection (c), the taxpayer:

- (1) shall notify the department of environmental management;

and

(2) shall request from the department of environmental management:

(A) with respect to voluntary remediation conducted under IC 13-25-5, the certificate of completion issued by the commissioner under IC 13-25-5-16 for the voluntary remediation work plan under which the costs certified under subsection (c)(2) were incurred; or

(B) with respect to voluntary remediation not conducted under IC 13-25-5, a certification of the costs incurred for the voluntary remediation that are consistent with the costs certified under subsection (c)(2).

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.31.*

### **IC 6-3.1-23-13**

#### **Credit to be claimed on tax return; submissions to department of state revenue**

Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department of state revenue.

(b) The taxpayer shall submit the following to the department of state revenue:

(1) The certification of the qualified investment by the department of environmental management and the Indiana development finance authority under section 12(c) of this chapter.

(2) Either:

(A) an official copy of the certification referred to in section 12(d)(2)(A) of this chapter; or

(B) the certification issued by the department of environmental management in response to a request under section 12(d)(2)(B) of this chapter.

(3) Proof of payment of the certified qualified investment.

(4) A copy of the legislative body's resolution adopted under section 5(a)(2) of this chapter.

(5) Information that the department determines is necessary for the calculation of the credit provided by this chapter.

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.32.*

### **IC 6-3.1-23-14**

#### **Pass through entities entitled to credit**

Sec. 14. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, a partner, or a member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive

income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

*As added by P.L.109-2001, SEC.1.*

### **IC 6-3.1-23-15**

#### **Maximum amount of credit; source of funding for credit**

Sec. 15. (a) The amount of tax credits allowed under this chapter may not exceed one million dollars (\$1,000,000) in a state fiscal year unless the Indiana development finance authority determines under subsection (e) that money is available for additional tax credits in a particular state fiscal year. However, if the maximum amount of tax credits allowed under this subsection exceeds the amount available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5), the maximum amount of tax credits allowed under this subsection is reduced to the amount available.

(b) The department shall record the time of filing of each return claiming a credit under section 13 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in the chronological order in which the return is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, a return claiming the credit filed later in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the information required by section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits granted under this chapter for each state fiscal year to the Indiana development finance authority. The Indiana development finance authority shall transfer to the state general fund an amount equal to the total credits granted from the subaccount of the environmental remediation revolving loan fund (IC 13-19-5).

(e) At the end of each state fiscal year, the Indiana development finance authority may determine whether money is available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5) to provide tax credits in excess of the amount set forth in subsection (a) in the subsequent state fiscal year.

(f) Before December 31 of each year, the Indiana development finance authority may assess the demand for tax credits under this chapter and determine whether the need for other brownfield

activities is greater than the need for tax credits. If the Indiana development finance authority determines that the need for other brownfield activities is greater than the need for tax credits, the authority may set aside up to three-fourths (3/4) of the amount of allowable tax credits for the subsequent state fiscal year and use it for other brownfield projects.

(g) Except as provided in subsection (h), the Indiana development finance authority may use money set aside under subsection (f) for any permissible purpose.

(h) Money specifically appropriated for tax credits may not be set aside for another use.

*As added by P.L.109-2001, SEC.1.*

### **IC 6-3.1-23-16**

#### **Expiration of credit; carryover after expiration date**

Sec. 16. A tax credit may not be allowed under this chapter for a taxable year that begins after December 31, 2005. However, this section does not affect the ability of a taxpayer to carry forward the excess of a tax credit claimed for a taxable year that begins before January 1, 2006, under section 11 of this chapter.

*As added by P.L.109-2001, SEC.1. Amended by P.L.245-2003, SEC.33.*

### **IC 6-3.1-23-17**

#### **Guidelines**

Sec. 17. The Indiana development finance authority, after consulting with the department of environmental management and the budget agency and without complying with IC 4-22-2, may adopt guidelines to govern the administration of this chapter.

*As added by P.L.109-2001, SEC.1.*